

H.R. 2723

Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2003

Summary and Section-by-Section Analysis

H.R. 2723 was introduced by Rep. Simpson on July 14, 2003. The bill divides the ninth judicial circuit into two new circuits; it also authorizes the additional circuit judgeships requested by the Judicial Conference of the United States for the Ninth Circuit Court of Appeals. The bill is an amalgam of H.R. 1033 (108th Congress) and H.R. 1203 (107th Congress), with some new provisions designed to respond to concerns expressed at the hearing on H.R. 1203 held by the Subcommittee on Courts, the Internet and Intellectual Property of the House Judiciary Committee on July 23, 2002.

Section 1: Short Title

The short title of the bill is the “Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2003.” The name reflects the two principal purposes of the bill: to reorganize the Ninth Circuit Court of Appeals and to authorize new judgeships for the court. The new name also serves to distinguish this bill from H.R. 1033, the Ninth Circuit Court of Appeals Reorganization Act of 2003.

Section 2: Definitions

Section 2 is the definitional section. It is taken from section 8 of H.R. 1033, with appropriate changes in the cross-references.

Section 3: Number and Composition of Circuits

Section 3 divides the existing Ninth Circuit into two new circuits, adopting the alignment proposed by H.R. 1203 in the 107th Congress. The new Ninth Circuit would be composed of three states: Arizona, California, and Nevada. The Twelfth Circuit would comprise the districts of Alaska, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, and Eastern and Western Washington. Section 41 of Title 28 is amended accordingly.

Section 4: Judgeships

Section 4 is new. Responding to the judges’ emphasis on the need for new judgeships for the court of appeals, section 4 authorizes the appointment of additional circuit judgeships in accordance with the recommendation adopted by the Judicial Conference of the United States on March 18, 2003. As requested by the Judicial Conference, the bill creates 7 new appellate judgeships (5 permanent, 2 temporary). All 7 judgeships would be allocated to the new Ninth Circuit. The language of section 4

(including the provision on temporary judgeships) is taken from S. 920, the pending Senate bill that would implement the entire Judicial Conference request.

The Judicial Conference has made clear that the judgeships are needed today. However, the new Ninth Circuit would not come into existence until October 1, 2004. The bill therefore authorizes the President to appoint judges to “the former ninth circuit court of appeals” – the court that exists today – as soon as the bill becomes law, with the proviso that the judges must have their official stations in Arizona, California, or Nevada.

At the same time, there may be concern about allowing a single President to appoint 7 new judges to a court at once. The bill therefore divides the appointments between two Presidential terms; it provides that 3 of the 7 judges shall not be appointed before January 21, 2005. This approach is borrowed from the omnibus judgeship act of 1984.

Section 5: Number of Circuit Judges

Section 5 amends the table in section 44(a) of Title 28 to reflect the additional judgeships authorized by section 4. This section is based on section 3 of H.R. 1203. The number of judges has been changed to “24” for the new Ninth Circuit and “9” for the Twelfth Circuit. In accordance with S. 920 and prior judgeship legislation, temporary judgeships are not reflected in the table in section 44.

Section 6: Places of Circuit Court

Section 6 amends section 48 of Title 28. It adds Phoenix to the list of places of holding court for the new Ninth Circuit. It also reflects the fact that the Ninth Circuit now holds its regular argument sessions in Pasadena rather than Los Angeles.

Section 7: Assignment of Circuit Judges

Section 7 provides for the assignment of active circuit judges to each of the new circuits. It is based on section 5 of H.R. 1203.

Section 8: Election of Assignment by Senior Judges

Section 8 authorizes senior circuit judges to choose whether to be assigned to the new Ninth Circuit or to the Twelfth Circuit. This section is based on section 6 of H.R. 1203.

Section 9: Seniority of Judges

Section 9 provides for the seniority of the judges on the two new courts. It is taken from section 7 of H.R. 1203.

Section 10: Application to Cases

Section 10 is a transitional provision. It is taken from section 8 of H.R. 1203.

Section 11: Temporary Assignment of Circuit Judges Between Circuits

Judicial vacancies or caseload growth will sometimes affect one of the new courts of appeals more than the other. Section 11 maximizes flexibility in the allocation of judges between the two circuits by allowing circuit judges of each circuit serve in the other circuit without the need to seek designation by the Chief Justice. This is accomplished through an amendment to section 291 of Title 28.

Section 12: Temporary Assignment of District Judges Between Circuits

At the hearing on H.R. 1203, witnesses expressed concern that dividing the Ninth Circuit would impair the ability of the various courts within the circuit to lend judges to those districts suffering temporary judicial need. Section 12 addresses this concern by authorizing each of the two new circuits to assign district judges to serve in the other circuit without having to seek designation by the Chief Justice. The authorization is contained in amendments to section 292 of Title 28, the section that deals with temporary assignment of district judges.

Section 13: Administrative Coordination

Section 13 is new. At the hearing on H.R. 1203, witnesses suggested that the management and administrative functions of the Ninth Circuit benefit from economies of scale. To permit the 2 new circuits to continue to enjoy these economies of scale, section 13 amends section 332 of Title 28 by adding a new subsection authorizing any 2 contiguous circuits to jointly carry out administrative functions and activities when the circuit councils of the 2 circuits determine that these functions will benefit from coordination or consolidation.

Section 14: Administration

Section 14 provides further authorization for transitional activities. It incorporates section 10 of H.R. 1203, except that it provides for a cessation date for the former Ninth Circuit of October 1, 2006, two years after the proposed effective date of the Act.

Section 15: Effective Date

Section 15, which corresponds to section 10 of H.R. 1033, provides for an effective date of October 1, 2004. There is an exception for section 4, which authorizes new judgeships and is effective on the date of enactment.